



Common Sense Initiative

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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Environmental Protection Agency

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Plan Approval Amendments

Rule Number(s): 3745-91-01, 3745-91-02, 3745-91-03, 3745-91-04, 3745-91-05, 3745-91-06, 3745-91-07, 3745-91-08, 3745-91-09, 3745-91-10, 3745-91-12

Date of Submission for CSI Review: _____

Public Comment Period End Date: _____

Rule Type/Number of Rules:

New/ rules

No Change/ 3 rules (FYR? 3)

Amended/ 8 rules (FYR? 8)

Rescinded/ rules (FYR?)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing

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regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

- 1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- Requires specific expenditures or the report of information as a condition of compliance.**
- Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

- 2. Please briefly describe the draft regulation in plain language.**

Please include the key provisions of the regulation as well as any proposed amendments.

Ohio EPA's Division of Drinking and Ground Waters (DDAGW) is reviewing and considering revisions of Rules 3745-91-01 through 3745-91-12 of the Ohio Administrative Code (OAC) to satisfy the five-year rule review requirements of section 106.03 of the Ohio Revised Code (ORC). The rules establish Public Water System (PWS) plan approval requirements.

DDAGW is proposing that minor amendments be made to OAC 3745-91-01, which contains the definitions for terms relevant to plan approval. The only revisions proposed are to add the definition for the term "general plan" and to add a text to expand the definition for the term "applicant". Rule 3745-91-02 contains requirements for plan approval applications for PWS that would like to make a substantial alteration to an aspect of their water system. The

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proposed revisions to this rule focus on making significant additions to what must be included in the general plan when a PWS wants to make a change to its water system and in what situations a general plan is required to be submitted. These more significant changes accompany minor proposed revisions that focus on improving clarity and conciseness through language changes and update the submission requirements to allow for electronic submission of plans.

The proposed revisions to rule 3745-91-03, which hold the requirements of plan drawings, are also very minor and allow for the submission of electronic copies of plan drawings to the Ohio EPA. Rule 3745-91-06 covers the requirements for supporting information that may need to be included depending on the complexity of the project. The revisions proposed to this rule add requirements for project summary sheets, affordability analysis and project justifications, but also remove the need to submit a variance application when submitting a plan for a new well. Rule 3745-91-07, containing the requirements that a submittal letter must include when sent to the Ohio EPA, has also been proposed to be amended with minor revisions that will alter the order signoff protocol by allowing the owner or public official to sign the detail plans as an alternative to signing just the submittal letter.

Rule 3745-91-08, containing the procedure for obtaining approval for changes in a PWS, has also been proposed to be amended. These changes are very minor and mainly serve to clarify language and replace out of date references. Finally, rule 3745-91-09 which details how new community water systems should be treating iron and manganese, has also been proposed to be amended. The revisions feature adding clarifying language to include non-transient non-community water systems as a part of the systems that must comply with the rule.

This rule package also contains proposals to not change specific rules, in addition to the minor and major changes summarized. Rules 3745-91-04 and 3745-91-05 containing the requirements for specifications and requirements for data sheets, respectively, are two of the rules that are proposed to be submitted without being changed. Rules 3745-91-10 and 3745-91-12 are also proposed to be submitted as “no change”. Rule 3745-91-10 contains the requirements for what should be included in drinking water source protection plans. While rule 3745-91-12 details certification by political subdivisions and investor-owned public utilities and what must be included when an agreement is made between the director and political subdivision or investor-owned public utility that owns or operates a public water system.

3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.

ORC Section 6109.04 authorize the Agency to adopt this regulation and states that the director shall “adopt, amend, and rescind such rules in accordance with Chapter 119 of the

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Revised Code as may be necessary or desirable to...govern public water systems to protect the public welfare, including rules governing contaminants in water that may adversely affect the sustainability of the water for its intended uses or that may otherwise adversely affect the public health or welfare.”

- 4. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program? If yes, please briefly explain the source and substance of the federal requirement.**

OAC 3745-91 does not have a federal counterpart and therefore does not exceed any federal requirements.

- 5. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

The rules in this package do not exceed the scope of federal requirements.

- 6. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

The public purpose for adopting such regulations (as stated in ORC 6109.04) is ensuring the availability of a safe and adequate supply of public drinking water. These rules help achieve this purpose by ensuring any significant changes to a PWS are approved by the Ohio EPA.

- 7. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

The Agency will base success of the plan approval rules on public water system compliance rates within our various drinking and ground water programs. PWS compliance rates are typically discovered through reported data and during sanitary surveys of PWS.

- 8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?**

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

No.

Development of the Regulation

- 9. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

If applicable, please include the date and medium by which the stakeholders were initially contacted.

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Stakeholders include public water system owners and operators, consultants, environmental organizations, other state agencies and in general, the public at large. The only measure someone must take to be notified of DDAGW's potential rule activity is to request to be added to our electronic or hard copy mailing list. In fact, stakeholders may sign-up themselves for this notification.

Stakeholders were notified of the DDAGW's intent to file these proposed changes on May 29th, 2020, by electronic mail. The early stakeholder outreach period was from May 29th, 2020, until June 26th 2020.

In addition, DDAGW will be seeking comment from stakeholders during the division's interested party review period. The interested party review period occurs before the rules are filed with JCARR and is used to address any concerns or questions from staff and our stakeholders.

10. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

Stakeholders were notified of the DDAGW's intent to file these rules as Amended on May 29th, 2021, by electronic mail. The Ohio EPA received 5 comments from stakeholders during this period. The comments consisted of suggestions for revised definitions, to what types of PWS the rules should apply to, and requests to carefully consider revisions to source water protection requirements. 2 comments received were requests to see the revised rule language, the operator was informed of our process and that the rule revisions have yet to be drafted.

11. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

Statutory authority for these rules is established in Section 6109 of the Revised Code and Ohio EPA promulgated these rules under Rules 3745-09-01 through 3745-09-10. References used include the latest revisions to 40 CFR Part 141 Subpart Y. Based on past data collected by the Ohio EPA and under previously stated authority of Chapter 6109 of the Ohio Revised Code, the agency determined that the amendments to be made are appropriate.

12. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

The regulations in OAC Chapter 3745-91 maintain consistency with existing industry and agency-wide standards and create some flexibility in rule to use approved alternatives.

13. Did the Agency specifically consider a performance-based regulation? Please explain.

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Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

No, the rules in this package are not performance-based. OAC Chapter 3745-91 dictates the process the regulated stakeholders must use to submit acceptable plans.

14. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The Ohio EPA reviewed its internal documents and determined there were no duplications.

15. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

Ohio EPA provides draft rule revisions to staff for internal review and comment. Additionally, training may be provided, and all effective rule revisions are distributed to staff. Implementation of these rules include the following:

- Seeking input from staff on implementation problems and developing solutions.
- Involving staff in developing the rule amendments.
- Developing internal procedures and guidance documents for staff to use in implementing rules.
- Regularly notifying staff of rule changes.
- Giving presentations on rule updates.

Adverse Impact to Business

16. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

a. Identify the scope of the impacted business community; and

3745-91-01: All PWS in the state of Ohio will be impacted and regulated by definitions in this rule.

3745-91-02 through 3745-91-12: These rules will impact anyone intending to construct a new PWS or make a substantial change to an existing system. The owner of the PWS will be responsible for any costs associated with the rules.

b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and

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3745-91-01: There will be no adverse impact from this rule and its proposed changes, as the rule defines terms that will be used throughout the rest of the chapter.

3745-91-02 through 3745-91-12: The adverse impact caused by these rules will be the time and resources spent by systems and consultants on drafting the detailed and general plans needed to obtain approval for the changes they would like to make to their PWS.

c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

3745-91-01: The additional definitions involved in regulating plan approval requirements will not incur any additional costs onto the PWS or consumer.

3745-91-02 through 3745-91-08, 3745-91-10, 3745-91-12: The costs associated with complying with these rules come from the time spent developing plans to the required specifications listed in the rules as well as the price of the application fee. Approvable plans must meet the engineering standards established in the rules, which are no more stringent than would otherwise be required for similar projects that involve the practice of engineering.

The formula for calculating plan approval fees authorized by section 3745.11 of the Revised Code is \$150 plus 0.35% of the estimated project cost, not to exceed \$20,000. The fee varies corresponding with project size. If a PWS intends to make engineering improvements to their system, they will be required to submit a general plan to the Ohio EPA beforehand. The cost of preparing and submitting the general plan varies based on the size of PWS and may range between \$10,000 - \$50,000 to create and submit all the necessary documents needed to gain approval for a project. The cost to comply will depend on the size of the PWS and the complexity of the proposed changes.

3745-91-09: The estimated cost of iron and manganese treatment required by this rule varies greatly depending on the size of the system. For example, for extremely small community water systems, such as nursing homes and apartment buildings, the estimated cost would be between \$15,691 and \$78,342. For a very small community of 250 people, the unit process for pressure filters is estimated to cost about \$313,367. The cost would increase to approximately \$501,513 for a community of 1,000 people. The estimated annual operating cost would be about \$1,567.

*Figures are updated using U.S. Department of Labor, Bureau of Labor Statistics Inflation Calculator used to account for inflation from 2016 to 2022.

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Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

The Agency considers the overall cost for complying with these regulations to be minor in comparison with ensuring the public is supplied with a safe and reliable source of drinking water.

Regulatory Flexibility

17. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

Rule 3745-91-07 includes an alternative to requiring the owner of the PWS or a public official having to sign the submittal letter. The rule now also allows for the owner or public official to sign the detail plans, as an indication that the plans are acceptable to them.

18. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Ohio EPA does not assign fines and penalties for first-time offenders and prefers to obtain compliance through outreach first and if needed, written notice of violations prior to any type of formal enforcement.

19. What resources are available to assist small businesses with compliance of the regulation?

The following resources are available:

- Ohio EPA's Office of Compliance Assistance and Pollution Prevention (OCAPP) is a non-regulatory program that provides information and resources to help small businesses comply with environmental regulations. OCAPP also helps customers identify and implement pollution prevention measures that can save money, increase business performance and benefit the environment. Services of the office include a toll-free hotline, on-site compliance and pollution prevention assessments, workshops/training, plain-English publications library and assistance in completing permit application forms. Additional information is available at epa.ohio.gov/ocapp.
- Ohio EPA maintains the Compliance Assistance Hotline 800-329-7518, weekdays from 8:00 a.m. to 5:00 pm and a permit assistance webpage

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https://www.epa.ohio.gov/dir/permit_assistance that contains links to several items to help businesses navigate the permit process, including the Permit Wizard, Answer Place, Ohio EPA's Guide to Environmental Permitting and eBusiness Center.

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